

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ALAN J. VEYS,

Plaintiff,

v.

DON W. RISKE; RISKE, SALISBURY &
KELLY, P.C.; RISKE & SALISBURY, P.C.;
and RISKE & ARNOLD, P.C.,

Defendants.

CASE NO. C07-5625BHS

ORDER GRANTING
DEFENDANTS' MOTION TO
WITHDRAW THE REFERENCE

This matter comes before the Court on Defendants' Motion to Withdraw the Reference (Dkt. 1). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and grants the motion for the reasons stated herein.

I. FACTUAL AND PROCEDURAL BACKGROUND

The facts underlying this matter, as alleged by Alan J. Veys in his adversary proceeding complaint, are as follows: Mr. Veys resides in Alaska and owns Lone Eagle Resorts, Inc. ("Lone Eagle Resorts") and Alan J. Veys Properties, LLC ("Alan J. Veys Properties"). Dkt. 1-6, Exh. 1 at 6. Lone Eagle Resorts operates the Pybus Point Lodge ("the Lodge") on property owned by Alan J. Veys Properties. Dkt. 1-6, Exh. 1 at 7-8.

On December 20, 2005, buyers interested in purchasing the Lodge obtained a \$3 million judgment in Wyoming state court against Mr. Veys for breach of contract. Dkt. 1-6, Exh. 1 at 7.

1 Mr. Veys filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Dkt. 1-6,
2 Exh. 1 at 6.

3 Mr. Veys was represented in the Wyoming litigation by Don W. Riske, who resides in
4 Wyoming and is licensed to practice law in that state. Dkt. 1-6, Exh. 1 at 6-7. Mr. Riske is a
5 member of Riske, Salisbury & Kelly P.C., a professional corporation operating as a law firm in
6 Wyoming. Dkt. 1-6, Exh. 1 at 6. Mr. Riske was also a member of two predecessor professional
7 corporations: Riske & Salisbury, P.C. and Riske & Arnold, P.C. Dkt. 1-6, Exh. 1 at 6.

8 Mr. Veys contends that the judgment against him in the Wyoming litigation resulted from
9 the professional negligence of Mr. Riske and that Mr. Veys, Alan J. Veys Properties, and Lone
10 Eagle Resorts would not have filed for bankruptcy absent such malpractice. Dkt. 1-6, Exh. 1 at 6.
11 Mr. Veys claims that Mr. Riske committed legal malpractice and objects to a proof of claim filed
12 by Riske, Salisbury & Kelly, P.C. in the Alan J. Veys Properties bankruptcy case. Dkt. 1-6, Exh.
13 1 at 9, 12.

14 Pending before the Court is Defendants' Motion to Withdraw the Reference (Dkt. 1).
15 Defendants contend that withdrawal of the reference is appropriate because there is a jury
16 demand, the issues presented are noncore, and judicial economies would be served. Dkt. 1 at 5.

17 II. DISCUSSION

18 All Title 11 bankruptcy cases and proceedings are referred to the bankruptcy judges of
19 this district. 28 U.S.C. § 157(a) ("Each district court may provide that any or all cases under title
20 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11
21 shall be referred to the bankruptcy judges for the district."); Local Rule GR 7 § 1.01 ("This court
22 hereby refers to the bankruptcy judges of this district all cases under Title 11, and all
23 proceedings arising under Title 11 or arising in or related to cases under Title 11.").

24 The authority of bankruptcy judges depends upon whether the matter constitutes a "core"
25 proceeding or a "noncore" proceeding. *See* 28 U.S.C. § 157. There is no exact definition of a
26 core proceeding. *In re Cinematronics, Inc.*, 916 F.2d 1444, 1449 (9th Cir. 1990). A non-
27 exhaustive list of core proceedings appears at 28 U.S.C. § 157(b)(2). To determine whether a
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1 proceeding constitutes a core proceeding, courts consider factors such as whether the rights
2 involved are independent from Title 11, whether the rights depend on state law, whether the
3 rights preceded the bankruptcy petition, and whether the rights were significantly affected by the
4 bankruptcy petition. *In re Cinematronics, Inc.*, 916 F.2d at 1450 n.5. Bankruptcy courts “may
5 enter appropriate orders and judgments” in core proceedings but must submit proposed findings
6 of fact and conclusions of law to the district court for de novo review in noncore proceedings. 28
7 U.S.C. §§ 157(b)(1), (c)(1). It is the responsibility of the bankruptcy judge, sua sponte or upon a
8 motion of a party, to determine whether a proceeding constitutes a core proceeding. 28 U.S.C. §
9 157(b)(3). Such a determination is not to be made solely on the basis that resolution of the
10 proceedings may be affected by state law. *Id.*

11 The district court may withdraw its reference to the bankruptcy court, in whole or in part,
12 sua sponte or on motion of any party. 28 U.S.C. § 157(d). If “resolution of the proceeding
13 requires consideration of both title 11 and other laws of the United States regulating
14 organizations or activities affecting interstate commerce,” withdrawal of the reference is
15 mandatory. *Id.*; *Security Farms v. Int’l Bhd. of Teamsters, Chauffers, Warehousemen & Helpers*,
16 124 F.3d 999, 1008 (9th Cir. 1997). Withdrawal is permissive “for cause shown.” 28 U.S.C. §
17 157(d); *Security Farms*, 124 F.3d at 1008. To determine whether cause exists, courts consider
18 “the efficient use of judicial resources, delay and costs to the parties, uniformity of bankruptcy
19 administration, the prevention of forum shopping, and other related factors.” *Security Farms*,
20 124 F.3d at 1008. Where noncore issues predominate, withdrawal may promote efficiency
21 because a single proceeding in the district court could avoid unnecessary costs implicated by the
22 district court’s de novo review of bankruptcy court determinations. *Id.*

23 Withdrawal may also be necessitated by a jury demand. Parties may consent to have the
24 bankruptcy judge conduct a jury trial. Fed. R. Bankr. P. 9015(b); 28 U.S.C. § 157(e) (“If the
25 right to a jury trial applies . . . the bankruptcy judge may conduct the jury trial if specially
26 designated to exercise such jurisdiction by the district court and with the express consent of all
27 the parties.”). If the parties fail to consent to a jury trial of noncore issues before a bankruptcy
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1 judge and the Seventh Amendment affords a right to trial by jury, withdrawal is appropriate. *In*
2 *re Cinematronics, Inc.*, 916 F.2d at 1450 n.5. To fail to withdraw the reference could cause a
3 violation of either the Seventh Amendment or the bankruptcy code:

4 If the district courts refused to review bankruptcy court jury verdicts on
5 noncore matters with the de novo standard, they would be acting contrary to
6 express statutory mandate, *see* section 157(c)(1). Yet, if they reviewed the
7 bankruptcy court verdicts de novo they would be at odds with the Seventh
8 Amendment.

9 *Id.* at 1451.

10 Defendants contend that withdrawal of the reference is necessitated by Plaintiff's jury
11 demand because Defendants have not consented to a jury trial before the bankruptcy court and
12 because Plaintiff's claims are noncore. Dkt. 1 at 5.

13 **A. CORE OR NONCORE PROCEEDING**

14 Mr. Veys contends that his adversary proceeding constitutes a core proceeding in several
15 respects. First, Mr. Veys contends that the malpractice claim is a core proceeding because Riske,
16 Salisbury & Kelly P.C. filed a proof of claim to which Mr. Veys objects. Dkt. 1-5 at 3. Mr. Veys
17 cites *In re S.G. Phillips Constructors, Inc.*, 45 F.3d 702, 705 (9th Cir. 1995), in which the Ninth
18 Circuit held that a creditor that "filed a claim resulting in an adversary proceeding that involved
19 the 'allowance or disallowance of claims against the estate'" under 28 U.S.C. § 157(b)(2)(B)
20 subjected itself to the bankruptcy court's core jurisdiction because the determination of whether
21 to allow claims is at the core of bankruptcy court jurisdiction. Mr. Veys further contends that
22 Riske, Salisbury & Kelly P.C.'s proof of claim renders the adversary proceeding a counterclaim
23 by the estate and a core proceeding under 28 U.S.C. § 157(b)(2)(C). In this case, Mr. Veys does
24 not contend that his adversary proceeding involves the allowance or disallowance of claims.
25 Moreover, even if the Court were persuaded that Riske, Salisbury & Kelly P.C.'s proof of claim
26 invokes the bankruptcy court's core jurisdiction, Riske, Salisbury & Kelly P.C. is but one of four
27 defendants in Mr. Veys's adversary proceeding. The other defendants have not filed proofs of
28 claim and therefore have not subjected themselves to the bankruptcy court's core jurisdiction. As
to the other defendants, Mr. Veys's adversary proceeding does not constitute a counterclaim.

1 Next, Mr. Veys contends that his legal malpractice claim falls within one of the two
2 catchall provisions of 28 U.S.C. § 157(b)(2). Dkt. 1-5 at 4. Mr. Veys contends that his adversary
3 proceeding for legal malpractice constitutes a “proceeding[] affecting the liquidation of the
4 assets of the estate or the adjustment of the debtor-creditor or the equity security holder
5 relationship, except personal injury tort or wrongful death claims.” 28 U.S.C. § 157(b)(2)(O); *Id.*
6 Mr. Veys fails to cite any portion of the Confirmed Plan supporting his view that the outcome of
7 the adversary proceeding will affect the liquidation of estate assets. *But see* Dkt. 1-10, Exh. B at
8 23 (Debtors’ Amended Joint Disclosure Statement listing sources for repayment under the Plan
9 as “proceeds from lodge operations, investment income, sales of securities, or the sale of
10 property on an orderly basis.”); Dkt. 1-10, Exh. C at 34 (Debtors’ Pre-Confirmation
11 Memorandum listing the same sources). Mr. Veys fails to persuade the Court that the adversary
12 proceeding constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(O).

13 Mr. Veys having failed to convince the Court that his adversary proceeding constitutes a
14 core proceeding under 28 U.S.C. § 157(b)(2), the Court now turns to consideration of the factors
15 distinguishing core and noncore proceedings. First, Mr. Veys’s malpractice claim asserts rights
16 independent from Title 11. *See In re Cinematronics, Inc.*, 916 F.2d at 1450 n.5. Second,
17 resolution of Mr. Veys’s malpractice claim will depend on state law. *See id.* Third, the rights Mr.
18 Veys asserts preceded his bankruptcy petition. *See id.* Finally, it does not appear that the
19 adversary proceeding has been or will be significantly affected by the bankruptcy petition. *See*
20 *id.* The Court therefore concludes that Mr. Veys’s adversary proceeding constitutes a noncore
21 proceeding.

22 **B. PROPRIETY OF WITHDRAWAL**

23 Having determined that Mr. Veys’s adversary proceeding constitutes a noncore
24 proceeding, the Court now addresses whether there is cause to withdraw the reference under 28
25 U.S.C. § 157(d). In light of the noncore nature of Mr. Veys’s adversary proceeding, withdrawal
26 would promote efficient use of judicial resources. *See Security Farms*, 124 F.3d at 1008. It
27 appears that delay and costs associated with withdrawal would be insignificant because Mr.
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1 Veys's adversary complaint is in its early stages. Withdrawal would not disrupt the uniformity of
2 bankruptcy administration because, as discussed above, Mr. Veys's adversary complaint is
3 largely independent from issues of bankruptcy administration. Furthermore, the Court is not
4 concerned that withdrawal of the reference would promote forum shopping, as alleged by
5 Plaintiff. Finally, Defendants refuse to consent to a jury trial in bankruptcy court. Consideration
6 of the above factors supports withdrawal of the reference.

7 **C. TIMING OF WITHDRAWAL**

8 The right to a jury trial and the parties' failure or refusal to consent to a jury trial of
9 noncore issues in bankruptcy court does not require immediate withdrawal of the reference. The
10 bankruptcy court may retain jurisdiction to address pretrial matters, including discovery, pretrial
11 conferences, and routine and dispositive motions. *In re Healthcentral.com*, No. 04-17565 WL
12 2743497, at *9 (9th Cir. Sept. 21, 2007). Referral to the bankruptcy court promotes judicial
13 economy and efficiency by making use of that court's unique knowledge of Title 11 and
14 familiarity with the actions before it. *Id.* To promote these principles, district courts should
15 therefore "allow[] the bankruptcy court to retain jurisdiction over the action until trial is actually
16 ready." *Id.*

17 In this case, Mr. Veys contends, in part, that the Motion to Withdraw the Reference (Dkt.
18 1) should be denied because the bankruptcy court is qualified to hear pretrial matters on Mr.
19 Veys's legal malpractice claim. Dkt. 1-5 at 7. In their reply, Defendants contend that "[b]ecause
20 only the district court may conduct a jury trial, the district court should hear all matters
21 concerning this case out of concerns for judicial efficiency and judicial economy." Dkt. 1-7 at 4-
22 5.

23 The adversary proceeding does not implicate the bankruptcy court's unique knowledge of
24 Title 11. Declining to withdraw the reference of this matter to the bankruptcy court would not
25 promote principles of judicial economy and would instead needlessly require the time and
26 attention of two courts rather than one.

D. BANKRUPTCY COURT'S RETENTION OF JURISDICTION

Mr. Veys contends that Article 9 of the Confirmed Plan vests the bankruptcy court with jurisdiction over the adversary proceeding. Dkt. 1-5 at 5. Specifically, Mr. Veys cites paragraph 9.1(h), under which the bankruptcy court retains jurisdiction "to adjudicate adversary proceedings and contested matters pending or hereafter commenced in this Chapter 11 Case." Dkt. 1-6, Exh. 3 at 35. While the Confirmed Plan "bind[s] Debtors, Reorganized Debtors and all holders of Claims and Interests," it does not appear that any Defendants other than Riske, Salisbury & Kelly P.C. are bound by the Confirmed Plan, and Plaintiff does not so contend. Moreover, the bankruptcy court's retention of jurisdiction over adversary proceedings presupposes continued reference of such matters to the bankruptcy court.

III. ORDER

Therefore, it is hereby

ORDERED that Defendants' Motion to Withdraw the Reference (Dkt. 1) is **GRANTED**.

DATED this 28th day of November, 2007.



BENJAMIN H. SETTLE
United States District Judge